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DEPARTMENT OF EDUCATION

Proposed priority, requirements, definitions, and selection criteria--Arts in Education National Program (AENP)

Catalog of Federal Domestic Assistance (CFDA) Number:

84.351F.

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Deputy Secretary proposes a priority, requirements, definitions, and selection criteria under the Arts in Education National Program (AENP). We may use the priority, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2012 and later years. We intend to use the priority, requirements, definitions, and selection criteria to award a grant to an eligible applicant to encourage and expand national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments about this notice to Edith Harvey, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W308, Washington, DC 20202-5970.

If you prefer to send your comments by email, use the following address: edith.harvey@ed.gov. You must include the phrase "Arts in Education National Program--Comments on FY 2012 Proposed Priority" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Edith Harvey. Telephone: (202) 260-1393 or by email: edith.harvey@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, requirements, definitions, and selection criteria, we urge you to identify clearly the proposed priority, requirement,

definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 4W308, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please

contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the AENP is to support national-level high-quality arts education activities and services for children and youth, with special emphasis on serving children from low-income families and children with disabilities.

Program Authority: 20 U.S.C. 7271.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Model Projects

Background

Arts is a core academic subject. Arts education encourages creativity and analytical thinking and it highlights a student's unique qualities. Accordingly, and because the focus of the AENP is to promote high-quality arts education with special emphasis on serving children from low-income families and children with disabilities, we are seeking to support one or more projects that will develop and implement exemplary national-level arts education activities and services.

Proposed Priority:

One or more high-quality projects that are designed to

develop and implement, or expand, initiatives in arts education and arts integration (as defined in this notice) on a national level for pre-kindergarten-through-grade-12 children and youth, with special emphasis on serving children from low-income families (as defined in this notice) and children with disabilities. In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding will provide services and develop initiatives in multiple schools and school districts throughout the country, including in at least one urban, at least one rural, and at least one high-need community (as defined in this notice).

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an

application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS:

Background:

The AENP supports the implementation of high-quality arts education and arts integration activities and services in music, dance, theater, media arts, and visual arts, including folk arts. We are proposing these requirements to ensure that funded projects have the capacity to provide high-quality professional development, programming, and resources in all of these art forms and to expand the reach of services through strong partnerships with schools and communities.

Proposed Eligibility and Application Requirements:

The Assistant Deputy Secretary proposes the following eligibility and application requirements for this program. We may use one or more of these requirements in any year in which we award grants for the AENP.

1. To be eligible for an award, an applicant must be a national nonprofit arts education organization (as defined in this notice).

2. An applicant must describe in its application how it would serve children from low-income families and children with disabilities.

3. An applicant must describe in its application how it would implement the following activities and services at the national level:

(i) Professional development based on State or national standards for pre-kindergarten-through-grade-12 arts educators (as defined in this notice).

Note: National standards are the arts standards developed by the Consortium of National Arts Education Associations or another, comparable set of national arts standards. The standards developed by the Consortium outline what students should know and be able to do in the arts. These are not Department standards. To view the standards, please go to www.menc.org/resources/view/the-

[national-standards-for-arts-education-a-brief-history.](#)

(ii) Development and dissemination of instructional materials, including online resources, in music, dance, theater, media arts, and visual arts, including folk arts, for arts educators.

(iii) Arts-based educational programming in music, dance, theater, media arts, and visual arts, including folk arts, for pre-kindergarten-through-grade-12 students and arts educators.

(iv) Community and national outreach activities and services that strengthen and expand partnerships among schools, school districts, and communities throughout the country.

PROPOSED DEFINITIONS:

Background:

Several terms associated with this program are not defined in section 9101 of the ESEA. Therefore, we are proposing the following definitions for these terms.

Proposed Definitions:

The Assistant Deputy Secretary proposes the following definitions for this program. We may use one or more of these definitions in any year in which we award grants for the AENP.

Arts means music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher or other instructional staffer who works in music, dance, theater, media arts, or visual arts, including folk arts.

Arts integration means (i) using high-quality arts instruction within other academic content areas, and (ii) strengthening the arts as a core academic subject in the school curriculum.

High-need community means (i) a political subdivision of a State or portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or (ii) a political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children. For the purposes of determining if a community meets this definition, the term "low-income families" means families with incomes below the poverty line for the most recent fiscal year for which satisfactory data are available.

National non-profit arts education organization means an organization of national scope that is supported by staff or affiliates at the State and local levels and that

has a demonstrated history of advancing high-quality arts education and arts integration for arts educators, education leaders, artists, and students through professional development, partnerships, educational programming, and supporting systemic school reform.

Child from low-income family means a child who is determined by a State educational agency or local educational agency to be a child, in pre-kindergarten through grade 12, from a low-income family, on the basis of (a) the family having an income that meets the poverty criteria established by the U.S Department of Commerce, (b) the child's eligibility for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) the family's receipt of assistance under Part A of title IV of the Social Security Act, or (d) the child's eligibility for medical assistance under the Medicaid program under title XIX of the Social Security Act.

PROPOSED SELECTION CRITERIA:

Background:

The AENP is intended to support high-quality arts education and arts integration on a national level. To ensure that we award the grant to entities that have demonstrated capacity to meet the purposes of the program,

we have developed program-specific selection criteria. We propose to award a grant to an eligible entity on the basis of the quality of applications submitted, after taking into consideration one or more of the following proposed selection criteria as well as the requirements of the program.

Proposed Selection Criteria:

The Assistant Deputy Secretary proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria, as well as criteria from the Education Department General Administrative Regulations in 34.CFR 75.210, in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(1) Significance. The Secretary reviews each application to determine the extent to which--

(a) The proposed project is likely to build State and local capacity to provide, improve, or expand arts education and arts integration that address the needs of children and youth, with special emphasis on serving children from low-income families and children with

disabilities; and

(b) The applicant has a history of three or more years of demonstrated excellence in the areas of arts education and arts integration on a national scale.

(2) Quality of the project design. The Secretary reviews each application to determine the extent to which--

(a) The design of the proposed project is appropriate to, and will successfully address, the arts education needs of pre-kindergarten-through-grade-12 children and youth, with special emphasis on children from low-income families and children with disabilities;

(b) The proposed project will provide high-quality professional development for pre-kindergarten-through-grade-12 arts educators who provide instruction in music, dance, drama, media arts, or visual arts, including folk arts;

(c) The proposed project will develop and disseminate instructional materials, including online resources, in multiple arts disciplines for arts educators and other instructional staff;

(d) The proposed project will support arts-based educational programming; and

(e) The proposed project will provide community and

national outreach that strengthens and expands partnerships among schools, school districts, and communities throughout the country.

(3) Quality of project services. In determining the quality of the services to be provided by the proposed project, the Secretary considers the extent to which--

(a) The services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of project services; and

(b) The proposed project will provide services and initiatives that will reach students and arts educators in multiple schools and school districts in urban, rural, and high-need communities throughout the country.

Final Priority, Requirements, Definitions, and Selection Criteria:

We will announce the final priority, requirements, definitions, and selection criteria in a notice in the Federal Register. We will determine the final priority, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements,

definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, requirements, definitions, and selection criteria, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise

interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives

and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this proposed regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at:

www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 27, 2012

James H. Shelton, III,
Assistant Deputy Secretary for
Innovation and Improvement.

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